

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ASSOCIATION OF AMERICAN)	
PHYSICIANS & SURGEONS,)	
Plaintiff,)	
v.)	
)	No. 1:20-cv-00493-RJJ-SJB
FOOD & DRUG ADMINISTRATION; DR.)	
STEPHEN M. HAHN, <i>Commissioner of Food &</i>)	Hon. Robert J. Jonker
<i>Drugs, in his official capacity; BIOMEDICAL</i>)	
ADVANCED RESEARCH & DEVELOPMENT)	Mag. Sally J. Berens
AUTHORITY; GARY L. DISBROW, <i>Ph.D.,</i>)	
<i>Acting Director, Biomedical Advanced Research &</i>)	Oral Argument Requested
<i>Development Authority, in his official capacity;</i>)	
DEPARTMENT OF HEALTH & HUMAN)	
SERVICES; and ALEX AZAR, <i>Secretary of</i>)	
<i>Health & Human Services, in his official capacity,</i>)	
Defendants.)	

MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a) and W.D. Mich. L. Civ. R. 7.2, the Association of American Physicians & Surgeons (“AAPS” or “Plaintiff”) moves for a preliminary injunction against the federal Department of Health & Human Services (“HHS”), two of its constituent agencies – the Food and Drug Administration (“FDA”) and the Biomedical Advanced Research & Development Authority (“BARDA”) – and their respective lead officers (collectively, “Defendants”), based on the following:

1. Through the accompanying memorandum of law, declarations, and exhibits, Plaintiff demonstrates a likelihood of success on the merits of its claims with respect to the Equal Protection Clause (Count I) and the First Amendment (Count III), and the Administrative Procedure Act (Count II).
2. Absent injunctive relief, Plaintiff and its members will suffer irreparable harm in

the form of deprivation of constitutional and statutory rights.

3. The requested injunction is in the public interest. By denying access to a safe medication for prophylactic and early treatment of COVID-19, Defendants increase suffering and the loss of life, and exacerbate public fear resulting in an infringement on associative rights such as AAPS's and national political parties' conventions. It is in the public interest to eliminate arbitrary barriers to early access to safe medication for illness, and to reduce hoarding and wasting of such medication by government during this time of need.

4. The balance of the equities favors Plaintiff, whose members serve victims of COVID-19 with individualized medical care. Defendants are not even using the vast majority of donated hydroxychloroquine (HCQ), which degrades over time, and thus Defendants cannot credibly argue that it would be injured by an injunction against wasting the donated medication by arbitrarily limiting its use.

5. Pursuant to Local Civil Rule 7(d), Plaintiff contacted the named defendants via email to seek concurrence and determined that Defendants oppose Plaintiff's motion. Oral argument is requested on this motion because of the complex legal and factual issues involved in this case. Therefore, Plaintiff respectfully requests that the Court enter an order:

1. Enjoining all Defendants from enforcing the restrictions on the use of HCQ in the Strategic National Stockpile (SNS);
2. Ordering all Defendants to make available and distribute promptly without any interference, for the benefit of the public holding valid prescriptions, the HCQ being stored in the SNS;
3. Ordering Defendants HHS and FDA to retract their unsupported disparaging statements made on June 16, 2020, concerning use of HCQ; and

4. Enjoining all Defendants from impeding the distribution, sale or purchase of HCQ by adult members of the public during the COVID-19 pandemic.

Dated: June 22, 2020

Respectfully submitted,

/s/ Lawrence J. Joseph

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